

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:07-mj-106

-vs-

Chief Magistrate Judge Michael R. Merz

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MARK A. VAN NEST,

Defendant.

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**DECISION AND ORDER**

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This case is before the Court on Defendant's letter request (Doc. No. 3) for reconsideration of the Magistrate Judge's Decision and Order denying his request for appointed counsel (Doc. No. 2).

In the Order, the Magistrate Judge noted that Defendant's Financial Affidavit showed a monthly income of \$9,700, but monthly expenses of only \$6,310 and concluded that did "not demonstrate that Defendant is qualified for appointed counsel under the Criminal Justice Act Plan of this Court."

In his request, Defendant states that there are enclosed letters which show he is unable to obtain counsel, but no such letters were enclosed. Instead, Defendant has enclosed a copy of his 2006 W-2 from Tom Whiteside Auto Sales which shows an average monthly gross income of \$9,823.<sup>1</sup> He asserts that this results in a net income of \$6,339. The average monthly withholding shown on the W-2 is \$2,459.56, resulting in a monthly net income of \$7,363.44. Defendant shows

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<sup>1</sup>Defendant calculates his monthly gross at \$9,300, but the arithmetic belies that assertion:  $\$117,874/12 = \$9822.83$ .

monthly expenses, which have not been given in any detail, as \$6,310, leaving over \$1,000 per month available for counsel.

Defendant has one dependent, his spouse, who is not employed outside the home. According to the Bureau of the Census, the median family income in Ohio in 2005 for a family of that size was \$46,376.<sup>2</sup> Thus Defendant's income is 2.5 times the median and he is well into the top 10% of income earners in the country.<sup>3</sup> Defendant owns a home which, by his estimate, is worth \$200,000.

Given these facts, the Court remains unpersuaded that Defendant qualifies for appointed counsel under the Court's Criminal Justice Act Plan. The request for reconsideration is denied.

April 30, 2007.

s/ **Michael R. Merz**  
Chief United States Magistrate Judge

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<sup>2</sup>Source: [www.census.gov/hhes/www/income/medinesizeandstate.html](http://www.census.gov/hhes/www/income/medinesizeandstate.html), visited 4/27/2007.

<sup>3</sup>The cut-off for the top ten percent is \$92,114 adjusted gross income, according to The Tax Foundation.